



August 2, 2012

Obama WARN Act Guidance Bypasses Federal Law

Only a small number of legislative days remain for this Congress. The most pressing issue for it to address is the impending [fiscal cliff](#) in January — a combination of automatic cuts in federal spending, known as a "sequester," and tax increases. Yet, in a move that is becoming [all too common](#) for this President, instead of working with Congress to deal with that issue, the Obama Administration issued guidance that will bypass Congress and existing federal labor law for the President's own political gain.

WARN Act Background

The Worker Adjustment and Retraining Notification (WARN) Act of 1988 was a controversial labor statute that became law as the result of careful negotiations that forged bipartisan support to overcome President Reagan's veto. The compromise tried to balance the concern over the impact of mass layoffs and plant closures on local communities with the need to limit the federal government's involvement in private business decisions.

The WARN Act requires that businesses with 100 or more employees give at least 60 days' notice to workers or their union representatives, local governments, and state dislocated worker units before closing a plant or laying off a substantial number of workers. These notifications and data are then submitted by each state agency to the federal Department of Labor (DOL).

If an employer is unable to notify employees 60-days in advance of potential layoffs, the law requires that employers provide as much notice as possible. If the 60-day window is not met, or if no notice is given to employees, the employer must prove one of the three exceptions existed:

1. **Faltering company** — this exception narrowly covers companies seeking new capital or business in order to remain open, but where disclosing this information could jeopardize the investment or business opportunity. It only applies to plant closures.
2. **Unforeseeable business circumstances** — this exception more broadly applies to both plant closures and layoffs where it would have been impossible to know the change in business circumstances.
3. **Natural disaster.**

DOL has no enforcement powers under the WARN Act, so any violations of the law are brought against employers through the judicial system.

In addition to the federal WARN Act, at least 16 states have "mini" WARN Acts that build upon the requirements outlined in federal law. Some of the state laws, like in New York, require at least 90 days advance notice. Others, like California and New Jersey, apply to companies with fewer than 100 employees.

Lack of Sequestration Transparency

President Obama has yet to identify specifics on how the sequester's cuts would be implemented. Congress has tried to force the issue by passing the [Sequestration Transparency Act of 2012](#), which requires the President to release the information within 30 days of the bill's enactment. But for now, the exact cuts under the sequester remain unclear.

Obama: No WARNING

With little information available on how the cuts will be implemented, and despite Obama Administration officials claiming the [threat of layoffs is overblown](#), federal contractors have started preparing for the realities of sequestration. Part of this preparation is determining whether to send WARN Act notices, which would mean notifying employees about potential layoffs this fall before the elections.

President Obama showed that he is willing to set aside the law as long as it suits his need to ensure voters don't head to the voting booth knowing they face a potential layoff that he could have prevented. On Monday, July 30, the DOL [said](#) it would be "inappropriate" for federal contractors to distribute WARN Act notices "given the lack of certainty about how the budget cuts will be implemented and the possibility that the sequester will be avoided before January."

What is ironic is that any uncertainty is a direct result of inaction by the Obama Administration and the Democrats. Sequestration is the law, and the President has said [he will veto](#) any attempts to roll it back. Democrats have done little to advance proposals to prevent the fiscal cliff. So while sequestration is not a foregone conclusion, it is a definite possibility. The uncertainty of how the budget cuts would be implemented is due to the Obama Administration's own lack of transparency and failure to plan.